93-460

Supreme Court, U.S.
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NO.

IN THE
SUPREME COURT OF THE UNITED STATES

October Term 1993

SAMMY BAUGHMAN, a.k.a.
SAMMY BOUGHMAN,

Petitioner,

v.

STATE OF SOUTH CAROLINA,

Respondent.

PETITION FOR WRIT OF CERTIORARI
TO THE SOUTH CAROLINA SUPREME COURT

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED FOR REVIEW

Did the South Carolina Supreme Court err in failing to recognize that Petitioner's due process rights were violated by the State of South Carolina's violation of a 1989 plea agreement through charging Petitioner with offenses which should have been dismissed under the 1989 plea agreement and to which he pleaded guilty?

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OPINIONS BELOW

The Court of Common Pleas of the Ninth Judicial Circuit of South Carolina, Hon. A. Victor Rawl presiding, issued a writ of habeas corpus on October 22, 1991. The South Carolina Supreme Court reversed the order of the trial court in an opinion filed on May 3, 1993, which is set forth in the Appendix at A-1.

JURISDICTION

The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1257(a). The final disposition of this case below was the South Carolina Supreme Court's decision reversing the issuance of the writ of habeas corpus, filed on May 3, 1993.

CONSTITUTIONAL PROVISIONS INVOLVED

The fourteenth amendment to the United States Constitution states in pertinent part:

> [N]or shall any State deprive any person of life, liberty, or property, without due process of law[.]

STATEMENT OF THE CASE

Proceedings Below

Petitioner brought a petition for writ of habeas corpus in the Court of Common Pleas of the Ninth Judicial Circuit of South Carolina, Hon. A. Victor Rawl presiding, on September 27, 1991. In the petition, Petitioner alleged that he was unlawfully imprisoned in violation of his right against double jeopardy under the Constitutions of the United State and South Carolina. Specifically, Petitioner argued that the sentence he was serving after a plea of guilty to co-

caine offenses in 1990 was illegally obtained because the cocaine offenses had been among the charges pending against him that were dismissed in exchange for a plea of guilty to marijuana offenses in 1989.

After an evidentiary hearing, the court correctly analyzed the issue raised by the petition under the due process clause and concluded that in 1990 Petitioner had been charged and asked to plead guilty to cocaine offenses, which were dismissed pursuant to a 1989 plea agreement for a marijuana offense. Accordingly, the court ordered the 1990 charges dismissed and the Petitioner released.

On appeal, the South Carolina Supreme Court reversed the decision of the lower court and held that, as a matter of contract law, the cocaine offenses

were not "charges pending" against the Petitioner within the meaning of the 1989 plea agreement. Although Petitioner raised the issue of due process fairness on appeal, the South Carolina Supreme Court did not address Petitioner's due process concerns, but merely treated the construction of the 1989 plea agreement as an issue of contract.

Statement of Facts

In June 1989, Petitioner was arrested by police officers from Moncks Corner, South Carolina, for various marijuana offenses. Pursuant to a plea agreement dated October 12, 1989, he pleaded guilty to possession of marijuana and possession of drug paraphernalia in the Municipal Court of Moncks Corner, Hon. Jack A. Landis presiding. The plea agreement states in its entirety:

> UPON CONSIDERATION of the plea of guilty by Sammy Baughman to possession of marijuana and to possession of drug paraphernalia in the Municipal Court of Moncks Corner, all other charges pending against Mr. Baughman will be dropped, not limited to those listed in the following Uniform Warrant Numbers: Warrant Number C178302, Distribution of a Schedule I Drug, Marijuana which was remanded as Simple Possession of Marijuana on 8-16-89; Warrant Number C178303, Possession of a Schedule II Drug, (P.C.P.) which was dismissed or Nolle Prosequi by the Solicitor's Office.
>
> The undersigned law enforcement personnel agree to the above. Such a plea is in the best interest of justice and equitable distribution of this matter.

(Emphasis added.) The agreement was signed by Assistant Solicitor for the Ninth Judicial Circuit, Steve Davis, and a member of the Moncks Corner Police Department, Police Officer Wendell Bowen.

In January 1990, an arrest warrant for alleged cocaine offenses committed by

Petitioner was issued. The warrant was executed by Officer Bowen in June 1990, and Petitioner was indicted for cocaine offenses in August 1990. The offenses for which Petitioner was indicted allegedly occurred in July 1989, following Petitioner's arrest on the marijuana offenses and prior to execution of the plea agreement on the marijuana offenses.

It was established at the evidentiary hearing that at the time of his arrest, Petitioner protested to Officer Bowen that he believed the cocaine offenses had been dismissed as a result of his 1989 plea agreement. It is uncontroverted that Officer Bowen advised Petitioner that the cocaine offenses were not included in the charges dismissed in exchange for Petitioner's plea of guilty. Petitioner testified that as a consequence of Officer Bowen's remarks he did

not advise his counsel of the prior plea agreement or of his belief that the cocaine charges should have been dismissed under the agreement.

On November 26, 1990, Petitioner pleaded guilty to one count of distribution of cocaine before the Court of General Sessions of Berkeley County, Hon. Luke N. Brown presiding. Judge Brown sentenced him to 15 years in prison and a $25,000 fine.

Notwithstanding Officer Bowen's insistence to Petitioner that the cocaine offenses were not contemplated by the "charges pending" language of the 1989 plea agreement, Officer Bowen testified at the evidentiary hearing on Petitioner's petition for writ of habeas corpus that at the time of the 1989 plea agreement he knew of the alleged cocaine offenses and the investigation of Petition-

er by the Governor's Raid Team. In fact, although Officer Bowen was not a member of the Governor's Raid Team, it is undisputed that he worked closely with the team and participated in the investigation of Petitioner for the alleged distribution of cocaine. Officer Bowen testified that he shared a confidential informant with the team, the identity of whom he sought to protect by entering into the 1989 plea agreement with Petitioner. Despite his knowledge of the cocaine offenses, Officer Bowen testified that he did not discuss the offenses with Petitioner or his attorney prior to acceptance of the 1989 plea agreement because it was his view that the cocaine offenses were not covered by the 1989 agreement.

On the other hand, Petitioner's counsel, who drafted the plea agreement,

testified that it was his intent that the plea agreement cover any alleged offenses which occurred during the time of the investigation of Petitioner.

ARGUMENT

THE SOUTH CAROLINA SUPREME COURT ERRED IN FAILING TO RECOGNIZE THAT PETITIONER'S DUE PROCESS RIGHTS WERE VIOLATED BY THE STATE OF SOUTH CAROLINA'S VIOLATION OF A 1989 PLEA AGREEMENT THROUGH CHARGING PETITIONER WITH OFFENSES WHICH SHOULD HAVE BEEN DISMISSED UNDER THE 1989 PLEA AGREEMENT AND TO WHICH HE PLEADED GUILTY.

Over 20 years ago, this Court recognized that "when a plea rests on a promise or agreement of the prosecutor, so that it can be said to be part of the inducement or consideration, such promise must be fulfilled." Santobello v. New York, 404 U.S. 257, 262 (1971). A breach of a plea agreement entitles a defendant to an appropriate remedy. Id. at 262.

While contract principles are helpful in assessing the rights of a defendant under a plea agreement, due process notions of fairness ultimately define those rights, and a court must not "rigidly apply commercial contract law to all disputes concerning plea agreements." United States v. Garcia, 956 F.2d 41, 44 (4th Cir. 1992) (notwithstanding parol evidence rule, court could consider government's letter accompanying plea agreement in construing promises made as inducement to plea). In the leading Fourth Circuit case on construction of plea agreements, the court set forth the approach that must be taken in construing a plea agreement:

> In the process of determining whether disputed plea agreements have been formed or performed, courts have necessarily drawn on the most relevant body of developed rules and principles of private law, those pertaining to the forma-

tion and interpretation of commercial contracts. . . . But the courts have recognized that those rules have to be applied to plea agreements with two things in mind which may require their tempering in particular cases. First, the defendant's underlying "contract" right is constitutionally based and therefore reflects concerns that differ fundamentally from and run wider than those of commercial contract law. . . . Second, with respect to federal prosecutions, the courts' concerns run even wider than protection of the defendant's individual constitutional rights --to concerns for the "honor of the government, public confidence in fair administration of justice, and the effective administration of justice in a federal scheme of government." . . .

That the resulting interpretive doctrine is an amalgam of constitutional, supervisory, and private law concerns does not mean, however, that it is without form. Some ordering principles and guidelines have clearly emerged. Those relevant to this appeal bear emphasis here.

Private law interpretive principles may be wholly dispositive in an appropriate case. For example, whether a

written agreement is ambiguous or unambiguous on its face should ordinarily be decided by the courts as a matter of law. If it is unambiguous as a matter of law, and there is no suggestion of government over-reaching of any kind, the agreement should be interpreted and enforced accordingly. Neither side should be able, any more than would be private contracting parties, unilaterally to renege or seek modification simply because of uninduced mistake or change of mind. Such an approach is conformable not only to the policies reflected in private contract law from which it is directly borrowed, but also to constitutional concerns of fundamental fairness in "bargaining" for guilty pleas, . . . and to the wider concerns expressed in the exercise of supervisory jurisdiction over the administration of federal criminal justice. . . .

On the other hand, both constitutional and supervisory concerns require holding the Government to a greater degree of responsibility than the defendant (or possibly than would be either of the parties to commercial contracts) for imprecisions or ambiguities in plea agreements. . . . This is particularly appropriate where, as will usually be the case,

> the Government has proffered the terms or prepared a written agreement--for the same reasons that dictate that approach in interpreting private contracts. . . .
>
> As a necessary corollary, derelictions on the part of defense counsel that contribute to ambiguities and imprecisions in plea agreements may not be allowed to relieve the Government of its primary responsibility for insuring precision in the agreement. While private contracting parties would ordinarily be equally chargeable--so far as enforceability and interpretation are concerned--with their respective counsels' derelictions in negotiating commercial contracts, different concerns apply to bargained plea agreements. Unlike the private contract situation, the validity of a bargained guilty plea depends finally upon the voluntariness and intelligence with which the defendant--and not his counsel--enters the bargained plea.

United States v. Harvey, 791 F.2d 294, 300-01 (4th Cir. 1986) (emphasis added; citations omitted).

In this case, the South Carolina Supreme Court ignored the due process interests implicated in the construction of a plea agreement and instead rigidly applied contract law. In so doing, the South Carolina court relied on its earlier decision in State v. Gates, 299 S.C. 92, 382 S.E.2d 886 (1989), wherein it noted: "Where language in an instrument is perfectly plain and capable of legal construction, such language determines the force and effect of the instrument." 382 S.E.2d at 887. However, in State v. Gates, supra, in which the issue was whether the defendant and not the prosecution violated the terms of a plea agreement, the South Carolina Supreme Court explicitly noted that it could apply contract law because of the unique posture of the case, i.e., "this Court is not faced with the type of constitutional

claims presented in Santobello v. New York, [supra] (where guilty plea is induced by prosecutorial promises, those promises must be fulfilled)." 382 S.E.2d at 887.

Where, as here, there was a clear question of governmental overreaching on the part of Officer Bowen, see United States v. Harvey, supra, 791 F.2d at 300, and breach of promise, see United States v. Ringling, 988 F.2d 504 (4th Cir. 1993) (failure to debrief defendant prior to sentencing was breach of promise to make full nature and extent of defendant's cooperation known to the court at sentencing), the South Carolina Supreme Court was compelled to apply constitutional principles in construing the plea agreement.

It is Petitioner's position that the term "charges pending" unambiguously re-

fers to all criminal offenses which were brought or were known to the State at the time of the 1989 plea agreement. Cf. United States v. Hawes, 774 F. Supp. 965, 970 (E.D.N.C. 1991) (government's promise not to prosecute defendant for "any transactions involved in this investigation" could not be limited to transactions about which government had knowledge at time of plea). However, even if there were an ambiguity, it must be decided in favor of Petitioner. United States v. Harvey, supra, 791 F.2d at 300. The South Carolina Supreme Court's reliance on People v. Waterman, 140 Mich. App. 652, 364 N.W.2d 780 (1985); State ex rel. Woods v. Ratliff, 322 S.W.2d 864 (Mo. 1959) (en banc); and State v. Myal, 104 N.H. 188, 182 A.2d 605 (1962), each of which involved a matter of statutory construction, was pointless in determin-

ing Petitioner's rights under this particular plea agreement.

Viewed in the light most favorable to the State, this case presents a case in which the prosecution knows that certain charges not specifically mentioned in a plea agreement could be brought against Petitioner and the prosecution purposely conceals that knowledge from Petitioner and his attorney on the chance that the State can obtain some advantage from that concealment. The fact that Officer Bowen and not the Solicitor engaged in the concealment does not relieve the State of its duty to deal fairly with Petitioner. "There can be no distinction between promises made by prosecutors and the Attorney General's Office and promises made by the agents of the Drug Enforcement Administration." United States

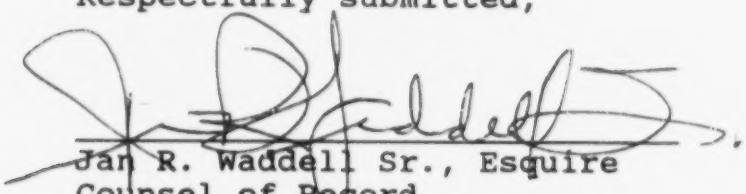
v. Barrett, 390 F. Supp. 1022, 1024 (D.S.C. 1975).

In treating the assessment of Petitioner's rights under the plea agreement as purely a matter of contract law, the South Carolina Supreme Court has signaled the law enforcement community that deceit will be rewarded in the plea bargaining process. The State gave up nothing in its "bargain" with Petitioner. The State obtained the benefit of protecting the identity of its confidential informant as well as extracting a lengthy sentence from Petitioner. This is a result which cannot be countenanced by this Court.

CONCLUSION

For all of the foregoing reasons, Petitioner respectfully requests this Court to grant his Petition for Writ of Certiorari.

Respectfully submitted,



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THE STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Sammy Baughman, a.k.a.,
Sammy Boughman, Respondent,

v.

State of South Carolina, Appellant.

Appeal from Berkeley County
A. Victor Rawl, Judge

Opinion No. 23846
Heard March 23, 1993--Filed May 3, 1993

REVERSED

Attorney General T. Travis Medlock, Chief Deputy Attorney General James Patrick Hudson, Assistant Attorneys General Delbert H. Singleton, Jr. and Lisa C. Jefferson, all of Columbia, for Appellant.

Shiela L. Thomas, of Summerville; and Francis M. Kirk, of Goose Creek, both for Respondent.

PER CURIAM: The State appeals an Order granting Respondent, Sammy Baughman (Baughman), habeas corpus.

We reverse.

FACTS

On June 10, 1989, Baughman was arrested by Moncks Corner Police Officers. He was charged with distribution of marijuana, possession of PCP and possession of drug paraphernalia. Pursuant to a plea agreement dated October 12, 1989, he pled guilty in Municipal Court to simple possession of marijuana and possession of drug paraphernalia. The plea agreement reads:

> Upon consideration of the plea of guilty by Sammy Baughman to possession of marijuana and to possession of drug paraphernalia in the Municipal Court of Moncks Corner, all other charges pending against Mr. Baughman will be dropped, not limited to those listed in the following Uniform Warrant Numbers: Warrant Number C178302, Distribution of a Schedule I Drug, Marijuana which was remanded as Simple Possession of Marijuana on 8-16-89; which Warrant Number C178303, Possession of a Schedule II Drug, (P.C.P.) which was dismissed

> or Nolle Prosequi by the Solicitor's Office. (Emphasis supplied.)

Unbeknownst to Baughman at the time of his plea, he was the subject of an investigation by the Governor's Raid Team, during June and July, 1989, for distribution of cocaine. As a result of that investigation, he was indicted, in September, 1990, for three counts of distribution of cocaine which had occurred between July 20-27, 1989. Baughman pled guilty to one count of distribution of cocaine, in exchange for which the other two counts were nolle prossed. He was sentenced to fifteen years imprisonment and a $25,000 fine.

In September, 1991, Baughman instituted habeas corpus proceedings, alleging that the cocaine offenses to which he pled guilty in 1990, were "charges

pending" at the time of his 1989 plea to possession of marijuana, such that they were covered by the 1989 plea agreement. Circuit Court agreed and granted the request for relief.

ISSUE

> The sole issue we address is whether the cocaine charges to which Baughman pled guilty in 1990 were contemplated by the 1989 plea agreement.

DISCUSSION

As noted previously, the 1989 plea agreement allowed Baughman to plead guilty to simple possession of marijuana in exchange for which "all other charges pending . . . will be dropped, not limited to those listed in the following Uniform Warrant Numbers . . . ." (Emphasis supplied). State asserts that

Baughman was properly indicted in 1990, in that no cocaine charges were "pending" at the time of the 1989 plea. We agree.

"Where language in an instrument is perfectly plain and capable of legal construction, such language determines the force and effect of the instrument." State v. Gates, 299 S.C. 92, 95, 382 S.E.2d 886, 888 (1989). In interpreting plea agreements, it is error for a court "to imply as a matter of law a term which the parties themselves did not agree upon." United States v. Benchimol, 471 U.S. 453, 456, 105 S.Ct. 2103, ___, 85 L.Ed.2d 462, 467 (1985).

By definition, a "charge" is an "accusation of a crime by a formal complaint, information or indictment." Black's Law Dictionary 211 (5th ed.

1979). This Court has not previously addressed at what point in time a criminal charge is "pending." However, jurisdictions which have decided the issue hold that a charge is not pending until an information is filed, an indictment returned, or a warrant issued. People v. Waterman, 364 N.W.2d 780 (Mich.App. 1985); State v. Ratliff, 322 S.W.2d 864 (Mo. 1959); State v. Myal, 182 A.2d 605 (N.H. 1962).

Here, the arrest warrant for the cocaine offenses was issued on January 24, 1990; Baughman was arrested on June 14, 1990, and an indictment was handed down on August 21, 1990. In sum, the charges to which Baughman pled guilty in 1990 were not pending at the time of his 1989 plea.

The Order granting Baughman habeas corpus relief is reversed.

REVERSED.

David W. Harwell C.J.

A. Lee Chandler A.J.

Ernest A. Finney Jr. A.J.

Jean H. Toal A.J.

James E. Moore A.J.

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Respondent.

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SUPPLEMENTAL APPENDIX

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF
	)	COMMON PLEAS OF
	)	THE NINTH
	)	JUDICIAL CIRCUIT
COUNTY OF BERKELEY	)	CASE NO:
		91-CP-08-1608
		90-GS-08-795
SAMMY BAUGHMAN a/k/a SAMMY BOUGHMAN,	)	
	)	
Petitioner,	)	
	)	
vs.	)	ORDER
	)	
PAUL DOUGLAS TAYLOR WARDEN OF LIEBER CORRECTIONAL INSTITUTION,	)	
	)	
Respondent.	)	

THIS MATTER came before this Honorable Court on October 18, 1991 pursuant to a Petition For Writ Of Habeas Corpus filed by Petitioner on September 27, 1991.

This Court issued its Order to Show Cause Why Writ Should Not Be Granted which was heard on October 18, 1991.

Petitioner Sammy Baughman requested this Court to set aside the previous sentence handed down by Judge Luke N. Brown on only

November 26, 1990 as being a violation of the double jeopardy provision of the Fifth Amendment of the U.S. Constitution and Article I, Section 12 of the South Carolina State Constitution.

The Respondent State of South Carolina, through the office of the Attorney General of South Carolina, by staff attorney Lisa G. Jefferson, filed a Return to said Petition.

Respondent challenged the Petition for the Writ as not being timely filed pursuant to S.C. Code Section 17-17-20. That section states:

> "If any person shall have willfully neglected by the space of two whole terms after his imprisonment to pray a Habeas Corpus for his enlargement such person, so willfully neglecting, shall not have any Habeas Corpus to be granted in vacation time in pursuance of this chapter."

This section seeks to restrict the hearing of a Habeas Corpus Writ to only

scheduled terms of Court after the first two whole terms have passed. It does not prohibit the filing of the Petition, but limits it to be heard only during scheduled terms of Court, rather than at a special hearing.

The argument by Respondent that Petitioner has forfeited the remedy of, Habeas Corpus is, therefore, dismissed.

Even if the Court did accept Respondent's argument and dismiss the Writ of Habeas Corpus, Respondent has asserted that the matter should be treated as a Post Conviction Relief action, and, if treated as such, would be properly before the Court.

The Court finds that both Petitioner and Respondent have agreed in open Court, on the record, that this Court has jurisdiction to hear the matter. The parties set forth different procedures as the basis of the

Court's jurisdiction.

Since the jurisdiction of the Court has been conceded and accepted by both parties, the Court proceeded to hear the Petition of Mr. Baughman.

There is no dispute of the parties that Mr. Baughman did enter into a written plea agreement with the police department of the Town of Moncks Corner and the Ninth Circuit Solicitor's Office whereby, in exchange for Petitioner's plea to certain charges before the Municipal Court of Moncks Corner, South Carolina, other charges would be dismissed. It is the interpretation of the wording of this plea agreement that is before the Court.

Petitioner was the subject of an undercover investigation by the Moncks Corner Police Department and other law enforcement agencies during June and July,

1989. The parties concede that all offenses alleged against Petitioner occurred during that time period.

Petitioner's plea agreement, entered into the hearing record as Petitioner's Exhibit 1, was dated October 12, 1989 and Petitioner appeared before the Honorable Jack Alan Landis, Esquire, Judge of the Municipal Court of Moncks Corner, South Carolina and pled to the charges of possession of marijuana and possession of drug paraphernalia on November 9, 1989.

The plea agreement specifically stated that "all other charges pending against Mr. Baughman will be dropped, not limited to those listed" under certain warrants.

John B. Williams, Esquire, the attorney who represented Mr. Baughman at the plea before the Municipal Court and who negotiated the plea with the Solicitor's

office, testified that there was no question in his mind that ALL CHARGES, whether actually filed against the Petitioner or being held by the police department and not filed at the time of the plea, were ALL covered by the agreement. Williams further testified it was the purpose of the agreement to close the cases on the Petitioner regarding the investigation of June and July, 1989.

Petitioner was later arrested in June, 1990 and charged with three counts of distributing cocaine. He was represented in this second action by Mitchell Lanier, Esquire, Public Defender for Berkeley County. Both Petitioner and Mr. Lanier testified that Petitioner had made no mention of the 1989 plea agreement to Mr. Lanier.

Petitioner appeared before Circuit Judge

Luke A. Brown in the Berkeley County Circuit Court on November 26, 1990 and pled guilty to one count of distribution of cocaine from charges arising during the June and July, 1989 period. This was the period of time covered by the November 9, 1989 MUnicipal Court plea.

During testimony presented at this hearing, Petitioner testified that he had objected when he was arrested in June, 1990 that all of the charges of June and July, 1989 were disposed of during the November, 1989 Municipal plea. Petitioner testified that officer Wendell Bowen of the Moncks Corner Police Department advised him that these charges were not covered.

Petitioner did not confer with Attorney Williams prior to his November, 1990 plea and Williams testified that he was not aware that Petitioner had been imprisoned under

the prior charges Petitioner pled to until approximately March or April, 1991, long after Petitioner had been sentenced.

This Court faces the question of whether the cocaine charges of 1990 were covered by the plea agreement of 1989. Attorney Williams testified that he drew the plea agreement and that it was his intention that the agreement cover all charges, whether pending or not, and that is why he used the language "not limited to those listed..." when drafting the agreement. The Ninth Circuit Solicitor's Office signed the agreement and, therefore, is bound by the terms thereof.

Petitioner testified that it was his understanding that all charges were covered by the agreement and that is why he raised the issue when arrested.

It was only when the arresting Officer Bowen told Petitioner that the later charges were not covered, did Petitioner plead. When asked why he did not raise the issue with his attorney at the November, 1990 Court appearance, Petitioner testified that he had been advised otherwise by Officer Bowen and, therefore, did not mention the earlier agreement to Mr. Lanier.

Respondent alleges that Petitioner waived any rights he may have had under the 1989 plea agreement by pleading guilty in November, 1990.

It is clear in this state that before a Defendant can waive any rights he may have, he must be aware of those rights and his waiver of those rights must be knowingly and willfully made. In South Carolina a waiver is considered to be an intentional relinquishment of a known right. Brown v.

State Farm Mutual, 233 S.C. 376; 104 SE2d, 673 (1958), Lawrimore v. American Health and Life Insurance Co., 276 S.C. 112; 276; SE2d 296 (1981).

When Petitioner inquired of his rights under the prior plea agreement he was advised by the arresting officer that Petitioner had no rights under the previous agreement. Due to Officer Bowen's action, Petitioner neither knew of his rights nor did he waive them.

Respondents assert that, if Petitioner's 1990 plea was invalid, then all of Petitioner's pleas should be dismissed, the 1989 plea agreement set aside, and Petitioner should face all charges anew.

The Court finds this position to be without basis and support. Petitioner complied with the terms of the 1989 agreement and pled guilty and paid the fine

imposed by the Municipal Court. To set aside the agreement and plea would work a great injustice on the Petitioner who has completed his obligation under the terms of said agreement.

Respondent asserts that there was not a meeting of the minds between Petitioner's attorney and the Solicitor's office regarding the 1989 plea agreement. It is the law of this state and country that plea agreements are to be constructed in the Defendant's favor. "Fair administration of criminal process and of interests of justice do not permit the prosecution to violate, whether intentionally or unintentionally, promises made in negotiation of guilty pleas." U.S. V. Barrett, (D.C.S.C.) 390 F. Supp. 1022 (1975), quoting U.S. v. Ewing, 489 F.2d. 1141 (5th Cir. 1973).

To allow the position of the Respondents

to prevail would be to put the state in a no-lose position. If the Defendant entered into a plea agreement with the State and served his sentence, whatever it may be, he could find himself facing the same charges at a later time. If the Defendant then alleged that the charges were disposed of in an earlier agreement, the prosecution could then say: "No, you misunderstood. Since you misunderstood we will throw out your earlier plea and start all over again."

Petitioner Sammy Baughman has no interest in starting all over again. He has already served almost one year in prison. This time cannot be given back to him. To coerce him into withdrawing this appeal by alleging that the prior agreements entered into by him may be later dismissed by the Court after he has completed the sentence would certainly expose Petitioner to double

jeopardy, in as much as the charges had unquestionably already been disposed of in the Municipal Court.

The questions that this Court must answer are (1) Were the cocaine charges for which he appeared in Circuit Court in 1990 covered under the 1989 Municipal Court agreement? and (2) Did Petitioner waive any rights he may have had under the 1989 plea agreement by appearing and pleading guilty in November, 1990?

This Court finds that it was clearly the understanding of the Petitioner and his attorney that the 1989 plea agreement covered ALL CHARGES, listed or not; and that, pursuant to said agreement, Petitioner should not have been prosecuted for the cocaine distribution charges.

Officer Bowen attempts to exclude the cocaine charges by asserting that another

police officer made the charges and Officer Bowen could not speak for the other officer.

Officer Bowen never advised Petitioner nor Petitioner's attorney that Officer Bowen could affect only some of the charges.

Therefore, Petitioner had the right to assume that Officer Bowen had the authority to affect all of the charges, especially since all of the charges occurred within the town limits of the Municipality of Moncks Corner and, therefore, within Officer Bowen's jurisdiction.

This Court also finds that Petitioner did not waive his rights under the plea agreement by appearing and pleading in November, 1990 to one count of distribution of cocaine. Before one can knowingly and intelligently waive one's rights, it is obvious one must know what those rights are.

Police Officer Bowen advised Petitioner that Petitioner, in effect, had no rights under the prior agreement. The police officer testified that he was involved throughout the June and July, 1989 investigations into Petitioner's activities and was aware of the cocaine charges when the 1989 plea agreement was entered into.

It is therefore,

ORDERED, ADJUDGED AND DECREED that the charges of distribution of cocaine to which Petitioner plead guilty on November 26, 1990, in the Ninth Judicial Court for Berkeley County, are hereby dismissed; it is further

ORDERED, ADJUDGED, AND DECREED that the counts of distribution of cocaine for which Petitioner was arrested in June, 1990 are dismissed as having been previously disposed of under the written plea agreement dated

October 12, 1989; and it is further

ORDERED, ADJUDGED, AND DECREED that the Town of Moncks Corner and/or the State of South Carolina are hereby barred and estopped from any further prosecution of Petitioner on any offenses, charges and/or occurrences that arose out of the investigation of Petitioner during June and July, 1989 by agents of the Town of Moncks Corner and/or the State of South Carolina; it is further

ORDERED, ADJUDGED AND DECREED that Petitioner Sammy Baughman a/k/a Sammy Boughman, is hereby released from the South Carolina Department of corrections immediately and unconditionally.

IT IS SO ORDERED!

A. VICTOR RAWL
Judge, Ninth Judicial Circuit Court

Moncks Corner, South Carolina
Dated: October 22, 1991.